THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION No. 2224 of 1995

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Dated: 12.04.2006

Between:

Karkuri Balaiah & others.

… Petitioners

AND

District Collector, Adilabad & others.

… Respondents

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ORDER:-

This writ petition is filed with a prayer as follows:

> "… … Hon'ble Court may be pleased to issue a writ, order or direction declaring the action of the Respondents No.1, 2 and 3 herein in treating the area covered by Korivichalama revenue village or the area covered by Korivichalama Gram Panchayat as Scheduled Area either for the purpose of enforcement of the provisions contained in various regulations applicable to the Scheduled Areas or the provisions contained in Gram Panchayat Raj Act as illegal and void

> after declaring the entire Korivichalama Village is not covered by any notification issued by the President of India under para 6 of the 5th schedule of the Constitution of India and consequentially to direct the respondents to refrain from treating the area covered by Korivichalama revenue village and the area covered by Korivichalama Gram Panchayat as Scheduled Area and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The dispute in the present writ petition is whether a village called Korivichalama of Adilabad district is one of the villages notified by the President of India under Para 6 of the 5th Schedule of the Constitution of India thereby making it one of the Scheduled Areas for the purpose of the 5th Schedule of the Constitution. During the pendency of the present writ petition, on a complaint that an interim order passed by this Court is violated, a contempt case in CC.No.326 of 1996 was filed by the petitioner in which the 1st respondent herein, the then Collector of Adilabad, filed a counter-affidavit stating "The census record shows that the Korivichalama is a village and its hamlets are 1) Rajampet, 2) Madapur and 3) Kishtamguda. It is therefore proves that village Rajampet is the hamlet of Korivichalama village in the year 1941. It is therefore, makes no difference in declaring the Rajampet, the hamlet of Korivichalama in the year 1950 as Scheduled Area by the presidential order since Korivichalama and Rajampet are one and the same villages".

In the counter-affidavit filed in the writ petition at Para 3 it is stated "The Gram Panchayat Korivichalama is constituted with two revenue villages, namely 1) Korivichalama and 2) Muthyampet. Both are scheduled villages. Korivichalama village is locally called as Rajampet village. Korivichalama is the revenue village. Rajampet is not a separate revenue village. Korivichalama and Rajampet are not separate villages. They are one and the same villages".

Both the affidavits are sworn to by the same officer Mr.Sukumar, who was working as Collector at that point of time in Adilabad district. The above extracted passages clearly demonstrate the fact that the deponent has no clue to the revenue administration. In the counter-affidavit filed in the contempt case referred to earlier,

he made a categoric statement that the village Rajampet is hamlet of Korivichalama village as per the revenue survey conducted in the year 1941 and according to the order of the President of India issued under Para 6 of the 5th Schedule in the year 1950, only Rajampet is declared to be a village falling under the scheduled areas for the purpose of 5th Schedule of the Constitution. Rajampet is only a hamlet of the Korivichalama village. Even according to the 1st respondent's counter extracted above, a hamlet is only a part of the revenue village and does not constitute the entire village. The presidential notification under the 5th Schedule notifying a part of the revenue village (Hamlet), in my view, cannot be extended to the main village in the absence of a clear notification.

In the counter-affidavit filed in the writ petition, in the relevant portion, which is already extracted above, the deponent says Korivichalama is locally called as Rajampet village and therefore, since Rajampet was already notified by an order of the President under the 5th Schedule of the Scheduled Areas, the entire village of Korivichalama is treated as a part of the Scheduled Area not only demonstrates the utter ignorance of law, on the part of the officer, but also the scant respect he has for the rights of the citizens of this country.

The inclusion of a village or a part of the village in the Scheduled Areas under 5th Schedule of the Constitution of India affects the rights of the non-tribals residing in that area. Therefore, the matter is required to be examined precisely with reference to the records and the legal position, but not to be decided casually on the basis of the local beliefs as sought to be done by the 1st respondent.

In the circumstances, the 1st respondent is directed to examine the issue whether Korivichalama village is, in fact, a part of the notification issued by the President of India under Para 6 of the 5th Schedule and take appropriate decision thereon in the light of the observations made above.

The writ petition is accordingly disposed of, as indicated above. No order as to costs.

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J.CHELAMESWAR, J

Date: 12.04.2006

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